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June 19, 2023

By ECF

Honorable Cathy L. Waldor, U.S.M.J.
US District Court for the District of NJ
50 Walnut Street
Newark, NJ 07101

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*
Civil Action No. 22-2632 (ES)(CLW)

Dear Judge Waldor:

We, along with Patterson Belknap Webb & Tyler LLP, represent Plaintiff Johnson & Johnson Health Care Services, Inc. (“JJHCS”), and submit this letter brief, pursuant to Local Rule 5.3, in opposition to the portion of Defendant’s motion, filed on June 16, 2023, to seal excerpts of the argument sections in the parties’ joint letter of June 2, 2023 regarding the Eyes of Counsel designation of patient lists. (ECF No. 109). In view of our objection, we suggested to counsel for Defendant that our positions be presented in a joint letter, but counsel declined to proceed that way. Thus, we submit the short letter brief in partial opposition to Defendant’s motion to seal.

While JJHCS agrees that the patient list attachment should remain under seal, it strongly opposes redacting any portion of the argument sections setting forth the parties’ positions. In the Third Circuit, there is a strong preference for arguments to be set forth on the public record and not sealed unless the argument reveals the contents of documents marked Confidential or Eyes of Counsel Only under the Discovery Confidentiality Order. Local Rule 5.3 was recently amended to reinforce that strong public policy. To seal the submissions, the Court is required to make strong findings requiring the sealing, submitted by the parties, and the party seeking to restrict public access must demonstrate, among other things, “the clearly defined and serious injury that would result if the relief sought is not granted;” L. Civ. R. 5.3 (c)(3)(c). SaveOnSP cannot meet this standard.

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The sections SaveOnSP seeks to redact are mere argument, but startling argument in which it agrees to JJHCS's allegations as to the extent of the damages JJHCS is suffering by SaveOnSP's wrongful scheme to take patient support money intended for patients, to which SaveOn and its insurance partners are not entitled. Through this application to seal, SaveOn seeks to hide these admissions from the public record. Local Rule 5.3 is not intended for this purpose.

In the Complaint, JJHCS alleges that SaveOn has wrongfully taken tens of millions of dollars in patient support money to which it is not entitled, and that its scheme had cost JJHCS in excess of \$100 million. (ECF 1, ¶¶ 1, 5). SaveOn has now referred to similar numbers in arguing why JJHSC should not be able to take persons enrolled in SaveOn, in violation of the JJHCS terms and conditions, off its CarePath program. The references sought to be redacted do not reveal the substance of the Exhibit attached with the confidential patient names, nor do they refer to any other confidential documents submitted to the Court or even produced in discovery. It is mere argument that SaveOn now finds inconvenient, which it prefers to not be public. That is not a basis for sealing the sections.

In response, SaveOn claims the numbers referred to refer to internal calculations based upon its confidential documents. But it did not so state to the Court in the letter, it did not submit that calculation or the underlying documents to the Court, or even produce them in discovery. Those sections were mere argument that rightfully belongs on the public record. Its application to seal those sections of the letter should be denied.

Respectfully submitted,

/s/ Jeffrey J. Greenbaum

JEFFREY J. GREENBAUM

cc: Counsel of record (*via ECF*)